

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

**KATHLEEN MAKI, individually and on
behalf of all others similarly situated,**

No.

Plaintiff.

vs.

**INDEX NEWSPAPERS, LLC D/B/A THE
STRANGER; MJJKT Corp., D/B/A Licorous;
and CAPTAIN BLACK'S LLC, D/B/A
Captain Blacks, Washington State
Corporations, Individually and on Behalf of
All Similarly Situated Entities, and DOES 1
through 100, inclusive.**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Defendant

CLASS ACTION COMPLAINT

Plaintiff Kathleen Maki (“Plaintiff”), for her Class Action Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by her attorneys:

1. Introduction

1. Plaintiff brings this action on behalf of herself and all other similarly situated consumers who purchased gift certificates from Index Newspapers, LLC d/b/a The Stranger (“Index

1 Newspapers") through its StrangerMart website. StrangerMart brand gift certificates are sold and
 2 issued by Index Newspapers with expiration dates and other terms that violate federal and
 3 Washington law.

4 2. Defendant Index Newspapers owns and operates the StrangerMart website
 5 ("StrangerMart"), affiliated with and linked to TheStranger.com, its weekly newspaper's website.
 6 The StrangerMart is a so-called "Daily Deal" website which touts itself as "[y]our home for HALF
 7 OFF gift certificates to Seattle restaurants, stores and services".

8 3. Defendant Index Newspapers sells these gift certificates online, and targets the Seattle
 9 Metropolitan area in the State of Washington for the sale of gift certificates. On information and
 10 belief, these gift certificates invariably contain expiration dates of one year or less and other
 11 restrictive terms and conditions.

12 4. Defendant Index Newspapers partners with merchants in the Seattle area to promote
 13 their products and/or services, selling gift certificates at a 50% discount. On information and belief,
 14 Defendant Index Newspapers shares the revenue derived from the sales of gift certificates with its
 15 partner merchants, including Defendant MJKT Corp., D/B/A Licorous ("Licorous") and Defendant
 16 Captain Blacks, LLC, D/B/A Captain Blacks ("Captain Blacks") (Collectively with Index
 17 Newspapers, "Defendants").

18 5. The Electronic Fund Transfers Act (the "EFTA"), 15 U.S.C. § 1693 *et seq.*, as amended
 19 by the Credit Card Accountability Responsibility and Disclosure Act (the "CARD Act"), expressly
 20 prohibits the sale and issuance of gift certificates with expiration dates of less than five years.
 21 Furthermore, the Washington State Gift Certificate statute, RCW 19.240, *et seq.*, expressly
 22 prohibits the sale or issuance of gift certificates with *any* expiration date whatsoever.

1 6. The gift certificates sold by Defendant Index Newspapers fall squarely within the federal
2 and Washington state definitions of “gift certificate”, as defined in 15 U.S.C. § 1693(l)(1)-(m) and
3 RCW 19.240.010(4), (5).

4 7. Defendants violate the CARD Act by issuing gift certificates which, on information and
5 belief, invariably contain expiration dates of less than five years. Defendants further violate
6 Washington law by inducing consumers to buy gift certificates intended for use in the State of
7 Washington, while knowing that their gift certificates contain expiration dates, which are forbidden
8 under RCW 19.240.020.

9 8. Defendants impose other restrictions on the use of its gift certificates which violate
10 Washington State law as well. For example, Defendants states: “**no cash/credit back**” or similar
11 language on the face of their gift certificates. These limitations are also clearly forbidden under
12 RCW 19.240.020.

13 9. Defendants further attempt to confuse and mislead consumers by printing: “**State law**
14 **requires merchant to redeem certificate for full voucher purchase prices following expiration**
15 **date printed above**” or similar language on the face of their gift certificates. Such a statement
16 falsely and misleadingly implies to the consumer that Washington law distinguishes between the
17 amount paid for the gift certificate and the face value printed on the gift certificate itself. In fact,
18 Washington law makes no such distinction. This is an “unfair or deceptive act or practice” that
19 violates the Washington Consumer Protection Act, RCW 19.86 *et seq.* (the “CPA”). Washington
20 Law requires the merchant to redeem certificate for the full face value of the certificate, not the full
21 “voucher purchase price.”

10. Defendants' unfair and/or deceptive business practices violate the CPA in multiple
 1 ways, including their printing of unlawful expiration dates and other limitations on the face of the
 2 gift certificates, and by falsely informing customers that they are not entitled to retain surplus value
 3 or use the gift certificates in multiple transactions. Consumers are never informed that these
 4 restrictions are in direct violation of Washington law. On information and belief, many consumers
 5 choose to forego using their gift certificates when the gift certificate shows on its face that it has
 6 already expired. On information and belief, many consumers forego asking for a refund of any
 7 unused value of their gift certificate, based upon the statement on Defendants' gift certificates: "**no**
 8 **cash/credit back**". On information and belief, consumers forego the full value of their gift
 9 certificate, based on the statement on Defendants' gift certificates "**State law requires merchant to**
 10 **redeem certificate for full voucher purchase price following expiration date printed above**".
 11 Defendants further compound their unfair and/or deceptive practices by including a cover letter
 12 with their certificates, which states, in direct violation of RCW 19.240.090, that partner merchants
 13 will not be required to honor certificates if their businesses are sold or closed. The result of these
 14 unfair and deceptive practices is that consumers are often deceived out of redeeming their gift
 15 certificates, or deceived to believe that they must redeem them at a reduced rate.

16. Defendants engage in these unfair and deceptive practices in an effort to maximize the
 17 number of consumers who either never redeem their gift certificate because of the perceived
 18 expiration date (therefore losing the entire value of the gift certificate), and to maximize the number
 19 of consumers who never redeem their gift certificate for its full value. It is well known in the gift
 20 certificate industry that a significant source of the benefit for a business selling gift certificates is
 21 that a substantial number of consumer never redeem them. Defendants are seeking to maximize
 22

1 this “margin” by misleadingly encouraging consumers to never redeem their gift certificates, or to
 2 redeem them for less than the full value to which they are entitled under law.

3 12. Plaintiff brings this action on behalf of herself and a Class of individuals seeking
 4 injunctive relief, damages, punitive damages, and reasonable costs and attorneys’ fees for
 5 Defendants’ violations of the CARD Act, the CPA, unjust enrichment, and such other and further
 6 relief as the Court deems equitable and just.
 7

8 **II. Parties**
 9

10 1. **Plaintiff Kathleen Maki** is a resident of Seattle, Washington. Plaintiff purchased Index
 11 Newspapers gift certificates from Defendants within the last three years.

12 2. **Defendant Index Newspapers** is a Washington Limited Liability Corporation that does
 13 business throughout the State of Washington.
 14

15 5. **Defendant Licorous** was a restaurant and bar located at 928 12th Avenue, Seattle,
 16 Washington 98122. Defendant Licorous marketed and sold gift certificates through StrangerMart.
 17 On information and belief, Defendant MJJKT, Corp. has ceased operating Licorous as of July 2011.
 18

19 6. **Defendant Captain Blacks** is a restaurant and bar located at 129 Belmont Avenue East,
 20 Seattle, Washington 9810
 21

22 7. **Defendants Does 1-100** are other merchants who have sold certificates through
 23 StrangerMart. Their identities will be determined through discovery.
 24

III. Facts of the Claim
 25

26 1. Defendant Index Newspapers offers its services to consumers throughout the State of
 27 Washington.
 28

2. Defendant Index Newspapers offers daily deals on gift certificates redeemable to a variety of different merchants.

3. The consumer agrees to purchase the gift certificate for a specified price. The gift certificate is then issued to the consumer. On information and belief, these gift certificates contain unlawful expiration dates and the restriction that the entire value of the gift certificate must be used in one transaction. On information and belief, these gift certificates and accompanying documents also contain false and misleading statements regarding the laws of Washington State.

4. The unlawful expiration dates and redemption conditions Defendant Index Newspapers imposes on its consumers results in unjust gains for Defendants to the detriment of the consumer.

5. Plaintiff purchased from the StrangerMart gift certificates for goods and/or services from Defendants Licorous and Captain Blacks, both of which expired before she could use them. In the case of the Licorous gift certificate, Defendant Licorous also closed before Plaintiff could use the gift certificate, and before the certificate expired. Plaintiff never received any value for her purchased gift certificates.

IV. Jurisdiction and Venue

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the case raises questions of federal law. The Court has jurisdiction over the state claims pursuant to 28 U.S.C. § 1337. The Court has personal jurisdiction over the Defendants because they are citizens of this State, conducting business in the State of Washington, have minimum contacts with the State, and sufficiently avail themselves to the markets of this State through its promotion, sales, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c).

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V. Class Allegations

1. Plaintiffs seek certification of a Class as defined below.

2 All persons who purchased or acquired a gift certificate from Defendant Index
3 Newspapers with an expiration date of less than five years from the date of purchase, and/or with
4 the restrictive redemption terms described herein relating to cash back and/or post-expiration
5 redemption values.

6 Excluded from the Class are (i) any judge presiding over this action and members of
7 their families; (ii) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any
8 entity in which Defendants or their parents have a controlling interest and their current or former
9 employees, officers and directors; (iii) persons who properly execute and file a timely request for
10 exclusion from the Class; and (iv) the legal representatives, successors or assigns of any such
11 excluded persons.

12 2. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time,
13 but on information and belief, Defendants have contracted with thousands of Class members
14 throughout the State of Washington, making joinder of each individual member impracticable.
15 Ultimately, the Class members will be easily identified through Defendants' records.

16 3. **Commonality and Predominance:** Common questions of law and fact exist as to all
17 members of the Class and predominate over any questions affecting only individual members.

18 These common questions include but are not limited to:
19 (a) Whether Defendants sold gift certificates to members of the Class containing an
20 expiration date and other restrictions in violation of Washington and federal law;

21 (b) Whether Defendants' practices violate the CPA;
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1 (c) Whether Defendants' practices violate 15 U.S.C. § 1693;
 2 (d) Whether Defendants' practices violate the public policy of the State of
 3 Washington;

4 (e) Whether Defendants were unjustly enriched as a result of receiving payments
 5 from Plaintiff and the Class; and

6 (f) Whether Plaintiff and the Class are entitled to relief, and the nature of such relief.

7 4. **Typicality:** Plaintiff's claims are typical of the claims of the other members of
 8 the Class. Plaintiff and the Class sustained damages as a result of Defendant's uniform wrongful
 9 conduct during transactions with Plaintiff and the Class.

10 5. **Adequate Representation:** Plaintiff will fairly and adequately represent and
 11 protect the interests of the Class, and has retained counsel competent to litigate this action. Plaintiff
 12 has no interests antagonistic to those of the Class, and Defendant has no defenses unique to
 13 Plaintiff.

14 6. **Appropriateness:** This class action is appropriate for certification because class
 15 proceedings are superior to all other available methods for the fair and efficient adjudication of this
 16 controversy and joinder of all members of the Class is impracticable. The damages suffered by the
 17 individual members of the Class will likely be small relative to the burden and expense of
 18 individual prosecution of the complex litigation necessitated by Defendants' wrongful conduct.
 19 Thus, it would be virtually impossible for the individual members of the Class to obtain effective
 20 relief from Defendants' misconduct. Even if members of the Class could sustain such individual
 21 litigation, it would not be preferable to a class action because individual litigation would increase
 22 the delay and expense to all parties due to the complex legal and factual controversies presented in
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1 this Complaint. By contrast, a class action presents far fewer management difficulties and provides
 2 the benefits of single adjudication, economy of scale, and comprehensive supervision by a single
 3 court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be
 4 ensured.
 5

6 **7. Policies Generally Applicable to the Class:** This class action is also appropriate
 7 for certification because Defendants have acted or refused to act on grounds generally applicable to
 8 the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards
 9 of conduct toward the members of the Class, and making final injunctive relief appropriate with
 10 respect to the Class as a whole. Defendants' policies challenged herein apply and affect members
 11 of the Class uniformly and Plaintiff's challenge of these policies hinges on Defendants' conduct
 12 with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.
 13
 14

15 8. Plaintiff reserves the right to revise the Class definitions based upon information
 16 learned through discovery.
 17

18 VI. Amount in Controversy

19 Plaintiff makes no specific allegations that the amount in controversy (including requests for
 20 attorneys' fees, injunctive and other relief) other than that Plaintiff expressly limits amount in
 21 controversy to less than \$5,000,000.
 22

23 VII. Claims

24 Count 1: Declaratory Relief

25 (On behalf of Plaintiff and the Class Against all Defendants)

27 1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
 28 2. There exists an actual controversy between Plaintiff and the Class on the one hand, and

1 Defendants on the other, to the extent Defendants' sales and issuance of gift certificates are contrary
 2 to Washington law and public policy. Plaintiff and the Class have standing to pursue judgment
 3 against Defendants under RCW 7.24 *et seq.*

4 3. As explained *infra*, Defendants' agreements with Plaintiff and the Class violate the
 5 Washington Consumer Protection Act by, *inter alia*, selling gift certificates that purport to have
 6 expiration dates, unlawfully restricting redemption to a single transaction, and falsely informing
 7 consumers that they are only entitled to half of the value of their gift certificate after the unlawful
 8 expiration date.

9 4. Defendants' sales of gift certificates with expiration dates and redemption restrictions to
 10 Plaintiff and the Class are contrary to applicable Washington and federal law and are therefore void
 11 as against Washington public policy.

12 5. Plaintiff and the Class have tangible legal interests in the instant controversy, including
 13 but not limited to:

14 (a) Their interest in receiving full value of the gift certificates they purchased from
 15 Defendants without regard to unlawful expiration dates and single-transaction
 16 redemption restrictions; and

17 (b) Their interest in obtaining injunctive relief so that Defendants do not in the future
 18 employ deceptive practices or violate Washington and federal law in their business
 19 dealings with consumers.

20 6. Plaintiff and the Class seek injunctive relief prohibiting Defendants from refusing to
 21 honor gift certificates, and to prevent Defendants from continuing their unlawful, unfair and
 22 deceptive business practices as described in this Complaint.

1 **Count II: Violation of the Washington Consumer Protection Act**

2 **(On behalf of Plaintiff and Class members who are residents of the State of Washington,**
3 **Against all Defendants)**

4 1. Plaintiff incorporates the foregoing allegations as fully set forth herein.

5 2. The CPA provides that “[u]nfair methods of competition and unfair or deceptive acts or
6 practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW 19.86.020.

7 3. Defendants engage in numerous unfair or deceptive practices in violation of the
8 Consumer Protection Act, including but not limited to: (1) marketing and selling gift certificates
9 that are subject to purported expiration dates which violate state and federal law, (2) marketing and
10 selling gift certificates with purported explicit restrictions, such as those stating: **"no cash/credit**
11 **back,"** which restrictions violate state law, (3) marketing and selling gift certificates with terms on
12 the face of the gift certificate that falsely advise consumers that they are only entitled to half of the
13 value of the gift certificate after the unlawful expiration date, and (4) sending cover letters along
14 with their certificates falsely advising that change of ownership or cessation of operation discharges
15 Defendants from their obligation to honor the certificates sold to consumers.

16 4. The result of these unfair and deceptive practices is that Plaintiff and members of the
17 Class have been deprived of the full value of the gift certificates to which they are legally entitled
18 under Washington law, and have either discarded gift certificates that they were deceived into
19 believing had “expired,” or have been deceived into either giving up some portion of the value of
20 the gift certificate or accepting delivery of goods and/or services that they did not want for the sole
21 purpose of receiving some approximation of full value of the gift certificate. Defendants’ unfair
22 and deceptive business practices have therefore caused economic harm to Plaintiff and the Class.



1 **Count III: Violation of 15 U.S.C. § 1693**

2 **(On behalf of Plaintiff and the Class Against all Defendants)**

3 1. Plaintiff incorporates the foregoing allegations as fully set forth herein.

4 2. 15 U.S.C. § 1693 prohibits the sale or issuance of gift certificates subject to expiration

5 dates, unless the expiration date is 5 years or greater and is conspicuously stated on the gift

6 certificate.

7 3. Defendants have cooperated to sell gift certificates to Plaintiff and members of the Class

8 that conspicuously state expiration dates of less than five years. These gift certificates clearly

9 violate federal law.

10 4. The result of this illegal conduct is that Plaintiff and members of the Class have been

11 deprived of the full value of the gift certificate to which they are legally entitled, and have discarded

12 gift certificates that they were deceived into believing had “expired”. Pursuant to 15 U.S.C. §

13 1693(m), such consumers are entitled to an award of actual and liquidated damages against

14 Defendants.

15 **Count IV: Restitution/Unjust Enrichment**

16 **(On behalf of Plaintiff and the Class Against all Defendants)**

17 1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

18 2. Defendants have knowingly received and retained benefits from Plaintiff and the Class

19 under circumstances that would render it unjust to allow Defendants to retain such benefits.

20 3. Under principles of equity and good conscience, Defendants should not be permitted to

21 retain the monies belonging to Plaintiff and the Class that they were paid in the form of payment for

22 gift certificates and that Defendants unjustly received as a result of its misconduct alleged herein.

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1 As result of Defendants' unlawful acts and conduct, Plaintiff and Class members were deprived of
 2 the use of their money that was unlawfully charged and collected by Defendants, and are therefore
 3 entitled to reimbursement of any money unjustly paid to Defendants in connection with the sale of
 4 gift certificates.
 5

6 **Count V: Breach of Contract**

7 **(On behalf of Plaintiff and the Class Against all Defendants)**

8 1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
 9
 10 2. Plaintiff and members of the Class entered into contracts with Defendants for the sale of
 11 gift certificates.

12 3. Upon information and belief, at no time prior to or after purchase did Defendants require
 13 Plaintiff or Class members to "click" to signify their assent to an expiration date, illegal or
 14 otherwise.

15 4. Pursuant to RCW 19.240.110, the clause of the contract purporting to set out an
 16 "expiration date" is void as a matter of public policy and is unenforceable.

17 5. Defendants have failed to honor the contracts they entered into with Plaintiff and Class
 18 members by refusing to honor the contract after a certain date.

19 6. Defendants breached their duty of good faith and fair dealing by intentionally adding
 20 expiration dates that they knew or reasonably should have known were in violation of Washington
 21 State and Federal laws.

22 7. Plaintiff and the Class have complied with their obligations under their contracts with
 23 Defendants.

24 8. Defendants' contractual breaches have caused Plaintiff and the Class to suffer economic

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1 and other damages.

2 **IX. Prayer for Relief**

3 WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, prays that the Court
 4 enter an order and judgment in their favor and against Defendants as follows:

5 (a) Certifying this case as a class action, and designating Plaintiff as Class
 6 Representative and her attorneys as Class Counsel;

7 (b) Declaring Defendants' conduct in the sale of gift certificates to Plaintiff and the
 8 Class to be illegal under State and Federal law, and granting injunctive relief as necessary to protect
 9 the Plaintiff and the Class and to prohibit the continuing conduct of Defendants' business in ways
 10 that violate State and Federal law;

11 (c) Awarding actual, compensatory, punitive, and liquidated damages to Plaintiff,
 12 and the Class in an amount to be proven at trial;

13 (d) For an order requiring Defendants to pay restitution for monies wrongfully
 14 acquired from the Plaintiff and the Class;

15 (e) Granting equitable and injunctive relief to Plaintiff and the Class, including
 16 restitution, disgorgement, and an accounting of all revenue gained by Defendants through their
 17 unlawful conduct alleged herein;

18 (f) Awarding Plaintiff and the Class reasonable costs and attorneys' fees;

19 (g) Awarding Plaintiff and the Class pre- and post-judgment interest;

20 (h) Issuing an order requiring Defendants to pay for a corrective notice campaign in
 21 order to address their improper, deceptive, and unlawful conduct;

22 (h) Granting such other and further relief as the Court deems equitable and just.

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X. DEMAND FOR JURY TRIAL

Plaintiff requests trial by a jury of all matters that can be so tried.

Dated this October 5, 2011.

Respectfully submitted,

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/sChristopher Carney

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